APPENDIX A

Opinion of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 16542

MARY CARNERA, General Administratrix of the Estate of Severino Carnera, deceased; and MARY CARNERA, Administratrix *ad Prosequendum* of the Estate of Severino Carnera, deceased,

Appellants,

v.

LANCASTER CHEMICAL CORPORATION.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued November 21, 1967

Before HASTIE, FREEDMAN and VAN DUSEN, *Circuit Judges*

OPINION OF THE COURT

(Filed December 8, 1967)

PER CURIAM

This personal injury and death case is before the court on appeal from a District Court order, dismissing the ac-

tion for lack of subject matter jurisdiction due to failure of plaintiff to allege in the Complaint or prove[1] that the principal place of business of the defendant corporation was not in New Jersey, of which state the appellant-fiduciary is admittedly a citizen. See 28 U.S.C. § 1332(c); *Kelly* v. *United States Steel Corporation,* 284 F. 2d 850 (3rd Cir. 1960). Also, appellant has not sustained her burden of proving that the corporate veil of the appellee parent corporation should be pierced to permit her to show that its business and that of its subsidiaries was a unitary enterprise with a principal place of business in Delaware.[2] See *Coryell* v. *Phipps,* 128 F. 2d 702, 704 (5th Cir. 1942), aff'd on other grounds, 317 U. S. 406 (1943); *Zubik* v. *Zubik and Drambel,* —— F. 2d —— (3rd Cir. No. 15,940, opinion of 9-29-67, at pp. 5 & 9).

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[1] As stated in *Kaufman* v. *Liberty Mutual Insurance Company* 245 F. 2d 918, 920 (3rd Cir. 1957), "the party asserting it has the burden of proving all the jurisdictional prerequisites," even though both parties have stipulated to the existence of the necessary jurisdictional facts.

[2] A careful examination of the record requires the denial of appellant's contention that the discovery rulings in the order of September 26, 1966, prevented her from securing information which might have justified a piercing of the corporate veil. Although defendant had several subsidiaries in September 1964, when this suit was instituted, the record shows that only one subsidiary did business in Delaware, whereas defendant furnished administrative services (just as logically a part of its business as a holding company) for several of its subsidiaries, including the Delaware subsidiary, in New Jersey. Cases dealing with the principal place of business of a subsidiary which does business with its parent have looked to the specific business done by each corporation in determining the principal place of business of each corporation. See *Epstein* v. *Gilford Industries, Inc.,* 218 F. Supp. 286 (S. D. N. Y. 1963); *Inland Rubber Corporation* v. *Triple A Tire Service, Inc.,* 220, 490 (S. D. N. Y. 1963).

Appendix A

Appellant's contention that 28 U.S.C. §1332(c) applies only as a limitation on the power of a corporation to remove an action from a state court to the federal court is rejected. See *Canton* v. *Angelina Casualty Company*, 279 F. 2d 553, 554 (5th Cir. 1960); 1 Moore, Federal Practice, § 0.77 [1.2], p. 717.6, n. 10 (2nd Ed. 1964).

The order of the District Court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX B

Judgment of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 16542

MARY CARNERA, General Administratrix of the Estate of Severino Carnera, deceased; and MARY CARNERA, Administratrix *ad Prosequendum* of the Estate of Severino Carnera, deceased,

Appellants,

vs.

LANCASTER CHEMICAL CORPORATION.
(D. C. Civil No. 874-64)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: HASTIE, FREEDMAN and VAN DUSEN,

Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

Appendix B

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, filed January 18, 1967, be, and the same is hereby affirmed, with costs.

ATTEST:

THOMAS F. QUINN
Clerk

December 8, 1967

APPENDIX C

Opinion of the United States District Court for the District of New Jersey

The Court: Well, gentlemen, I think I have lived with the case for a year now, particularly on the very questions that are involved here.

This was an action, as I recall, for personal injuries or death under the Products Liability Act.

I know that sometime last year there was a hearing, whether it was on interrogatories or some other facet of the case, and at that time the Court indicated to counsel that there was a certain question in the Court's mind of jurisdiction presented by the pleadings.

The plaintiff's suit is based upon diversity of citizenship, the plaintiff being a New Jersey citizen and the defendant, I believe, was incorporated in New York, if I am correct.

Mr. Hughes: Yes, your Honor.

The Court: The problem arose at that time, and is still present with us, concerning the principal place of business or the conduct of business activities of the defendant.

Plaintiff contends there is dual diversity under Section 1332(c) and, further, that because of the interconnection by the defendant corporation and other corporations and subsidiaries in some states, New York, and another state is Delaware, that there is established sufficient diversity to support Federal jurisdiction in this particular case.

Plaintiff refers to legislative history of 1332. Professor Moore, in his treatise, referred to this when he stated the basis of diversity, that a corporation is a citizen of the state wherein it is incorporated and if it has its principal place of business in another state it is also a citizen of the latter state. Thus a local corporation is no longer

able to gain access to the Federal Courts merely because it has been chartered in another state.

Both restrictions in regard to the higher jurisdictional amount and the dual corporate citizenship were made applicable to remove as well the principal jurisdiction.

The plaintiff's second ground appears to rest on the theory that the defendant corporation did not have its principal place of business in New York but in some other state, and upon inquiry the plaintiff still is unable to state which state, whether it be New York, Delaware or New Jersey, that it does have its principal place of business.

I think at the time of one of the motions that we had before this particular one I stated that such an allegation was insufficient to establish diversity and I think I mentioned to the plaintiff at that time that the plaintiff must show affirmatively—must affirmatively allege both the state of incorporation and the principal place of business while the plaintiff in its brief seems to indicate that Delaware is the principal place of business, or the state of incorporation—the principal place of business of the defendant Lancaster.

At this particular hearing he seems to indicate that he is not sure of that. Of course, I am not too much concerned with the fact that there were interlocking corporations or that some other corporations did share the warehouse facilities which Lancaster operated at Carlstadt, New Jersey, and it also has been affirmatively shown, and shown to the knowledge of the plaintiff, that another corporation with which Lancaster, so I understand, owned a major share of stock, that is, Gordon Chemical, did operate in New Jersey but that such an operation ceased in December of 1964, which was some two or three months before this action was commenced, or at the time this action arose.

Appendix C

It is also indicated in the depositions and in the pleadings that the Delaware corporation shared its personnel at the Lancaster plant in Carlstadt.

I think we should keep in mind the holding of the Kelly v. United States Steel Corporation case, which was decided in the Third Circuit in 1960, wherein, speaking of business activities, the Circuit Court stated that it is the activity rather than the occasional meeting of policy-making directors which indicated the principal place of business.

I think in this particular case there is some testimony that meetings were held other than at Lancaster but that at all times, and particularly at the time of the happening of the event in question here, that the president of Lancaster Chemical Company maintained his offices at Carlstadt, New Jersey.

It seems to me that under the Kelly case that the main place of concentration of activities, or business of the defendant Lancaster Chemical Company, was located in Carlstadt, New Jersey, and that seemed to be indicated from all the depositions, from the pleadings, from the affidavits and all the papers that were filed in this case. This being so, I am of the opinion that the motion on the part of the defendant for dismissal for lack of jurisdiction in this case should be granted.

My Clerk reminds me concerning Gordon. I think the transcript, Page 42, of Mr. Honohan's testimony, is that Gordon Chemical, Incorporated, ceased to exist in December 1964.

Mr. Hughes: Thank you, sir.